

REMARKS

In the Final Office Action dated June 29, 2009, claims 1-14, 16-17, 19-20, 22-33 and 36-40 are pending. Claims 25-33 are withdrawn. Claims 15, 18, 21 and 34-35 have been cancelled. Claims 1-14, 16-17, 19 and 36-40 are rejected under 35 U.S.C. §102(b) as anticipated by Li, U.S. Patent No. 5,250,054 ("Li"). Claims 20 and 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants express appreciation for the indication of the allowability of claims 20 and 22-24. With respect to the remaining claims, Applicants respectfully traverse the rejections.

Claim 19 was indicated as rejected in the Office Action Summary, but was not addressed by the Examiner's remarks. Applicants remind the Examiner that MPEP §707.07(i) requires that each pending claim should be mentioned by number and its treatment or status given.

Claims 1-14, 16-17, 19 and 36-40 are rejected under 35 U.S.C. §102(b) as anticipated by Li. Applicants respectfully traverse the rejection.

Claims 1 and 10 recite a delivery device and system for delivering an implant to an anatomical site in a body of a patient. The device includes a handle; a shaft having proximal and distal ends and attached to the handle at the proximal end, the distal end having a curved section and the proximal end having a substantially straight section; a pusher tube slideably fitted over the shaft and extending from the handle distally along the substantially straight section of the proximal end of the shaft; and a pushing mechanism operatively interconnected with the handle for actuating the pusher tube distally along the substantially straight section of the proximal end of the shaft to push the implant into the anatomical site, wherein the pusher tube is adapted to form an operative connection with the implant along the substantially straight section of the proximal end of the shaft. The system further includes an implant for being delivered to an anatomical site in the body of a patient.

Li does not teach, or suggest, at least, a pushing mechanism operatively interconnected with a handle for actuating a pusher tube distally along a substantially straight section of a proximal end

of a shaft to push an implant into an anatomical site. Li's apparatus facilitates tying knots in a suture. In doing so, Li's apparatus pulls an end of the suture into the device and away from the patient, rather than delivering an implant. Specifically, Li's apparatus is designed to "alternatively engag[e] the suture so as to hold it fast to the device or engag[e] the suture so that it can slip in a controlled manner relative to the device" (Li, col. 2, lines 19-22). This "engaging" allows the knot to be tied with the device. To tie the knot, Li's device includes an inner rod 6 with "a crochet-type hook 32 ... disposed adjacent the distal end 28 of inner rod 6" (Li, col. 7, lines 17-20) and an outer sheath 4, wherein "when inner rod 6 is positioned within outer sheath 4, the outer sheath and the inner rod can be moved relative to one another" (Li, col. 7, lines 42-44). This relative movement is controlled by a "handle 36 ... formed with two telescoping portions, a distal portion 38 and a proximal portion 40," in which "distal portion 38 is securely attached to proximal portion 12 of outer sheath 4, and proximal portion 40 is securely attached to proximal portion 26 of inner rod 6" (Li, col. 8, lines 26-30).

In use, "the surgeon can grasp the handle's proximal portion 40 ... and manipulate the handle's distal portion 38 toward and away from the handle's proximal portion 40" (Li, col. 8, lines 31-34). Thus, pushing on the handle's distal portion 38 moves the outer sheath 4 distally relative to inner rod 6, i.e., to more securely attach the suture to the device and allow the knot to be tied.

In operation, Li teaches:

"[O]uter sheath 4 and inner rod 6 are formed so that the inner rod's crochet-type hook 32 can engage a suture end 46 in a sort of grappling hook manner when the inner rod's distal portion 22 is extended relative to the distal portion 8 of outer sheath 4. Furthermore, by thereafter moving outer sheath 4 distally relative to inner rod 6 ... the inner rod's crochet-type hook 32 can coordinate with the outer sheath's distal end 14 to slidingly capture suture end 46 to suture manipulating device 2. Finally, by thereafter moving outer sheath 4 even further distally relative to inner rod 6 ... the inner rod's crochet-type hook 32 can coordinate with the outer sheath's distal end 14 to lockingly capture suture end 46 to suture manipulating device 2" (Li, Figs. 4-6A and col., 8, lines 47-62, emphasis added).

Thus, pushing on outer sheath 4 does not deliver an implant to a body site, but instead "lockingly captures suture end 46" to the device to tie the knot – in opposition to the statements of claims 1 and 10. Moreover, Li provides no teaching or suggestion of any pushing mechanism by which an implant may be delivered to a body site. Instead, in order to complete the tying the suture

knot with the apparatus, Li suggests that "suture manipulating device 2R is pulled away from suture manipulating device 2L ... so as to thereby form a suture throw" (Li, Fig. 7E and col. 11, lines 4-10). No suture is implanted by the Li device by pushing.

For at least the above reasons, Li fails to teach or suggest all of the elements in Applicants' claims 1 and 10, and thus fails to anticipate or render obvious these claims. Each of claims 2-9, 11-14, 16-17 and 36-40 depend upon one of claims 1 and 10, and are thus allowable for at least the reasons described above, and *moreso* because of additional features recited therein. Applicants respectfully request the Examiner withdraw the rejection and allow the claims.

CONCLUSION

In view of the above remarks, Applicants believe the pending application is in condition for allowance.

Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. MIY-P01-024 from which the undersigned is authorized to draw.

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